

AMENDED IN SENATE MARCH 30, 2004

AMENDED IN SENATE MARCH 15, 2004

SENATE BILL

No. 1201

Introduced by Senator Torlakson

February 10, 2004

An act to amend ~~Section~~ *Sections 374 and 701.8* of the Public Utilities Code, relating to electrical restructuring, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1201, as amended, Torlakson. Electrical restructuring: BART.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under that law. Existing law authorizes the San Francisco Bay Area Rapid Transit District's (BART) system to elect to obtain electricity from multiple sources, including (1) preference power purchased from a federal power marketing agency or its successor, (2) electricity supplied by one or more direct transactions, and (3) electricity supplied by any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system. *Existing law requires any electrical corporation that owns and operates transmission and*

distribution facilities that deliver electricity to BART, upon request by BART, to deliver preference power purchased from a federal power marketing agency or its successor, without discrimination or delay.

~~This bill would delete the authorization for BART to purchase electricity supplied by one or more direct transactions, and would instead authorize BART to elect to obtain electricity from suppliers other than federal power marketing agencies or electrical corporations subject to the jurisdiction of the commission. The bill would provide that electricity supplied pursuant to this authorization is not supplied pursuant to a direct transaction, that no entity supplying electricity to the BART District pursuant to this provision is a public utility subject to the jurisdiction of the commission as a result, and that any electrical corporation subject to the jurisdiction of the commission that owns and operates transmission and distribution facilities would be required, upon request by the BART District, to deliver electricity to the BART District pursuant to this authorization without discrimination or delay.~~
additionally require any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity to BART, upon request by BART, to deliver electricity purchased from a local publicly owned electric utility, as defined, without discrimination or delay. The bill would make other conforming changes.

Because a violation of the Public Utilities Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would declare that, due to the special circumstances applicable only to the BART District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. *Section 374 of the Public Utilities Code is amended to read:*

374. (a) In recognition of statutory authority and past investments existing as of December 20, 1995, and subject to the fire wall specified subdivision (e) of Section 367, the obligation to pay the uneconomic costs identified in Sections 367, 368, 375, and 376 shall not apply to the following:

(1) One hundred ten megawatts of load served by irrigation districts, as hereafter allocated by this paragraph:

(A) The 110 megawatts of load shall be allocated among the service territories of the three largest electrical corporations in the ratio of the number of irrigation districts in the service territory of each utility to the total number of irrigation districts in the service territories of all three utilities.

(B) The total amount of load allocated to each utility service area shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is allocated in each of the five years. Any allocation which remains unused at the end of any year shall be carried over to the succeeding year and added to the allocation for that year.

(C) The load allocated to each utility service territory pursuant to subparagraph (A) shall be further allocated among the respective irrigation districts within that service territory by the California Energy Resources Conservation and Development Commission. An individual irrigation district requesting such an allocation shall submit to the commission by January 31, 1997, detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the time frame requested. These plans shall include specific information on the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served, and shall not be less than eight megawatts or more than 40 megawatts. Provided, however, any portion of the 110 megawatts that remains unallocated may be reallocated to projects without regard to the 40 megawatts limitation. In making such an allocation among irrigation districts, the Energy Resources Conservation and Development Commission shall assess the viability of each

1 submission and whether it can be accomplished in the timeframe
2 proposed. The Energy Resources Conservation and Development
3 Commission shall have the discretion to allocate the load covered
4 by this section in a manner that best ensures its usage within the
5 allocation period.

6 (D) At least 50 percent of each year's allocation to a district
7 shall be applied to that portion of load that is used to power pumps
8 for agricultural purposes.

9 (E) Any load pursuant to this subdivision shall be served by
10 distribution facilities owned by, or leased to, the district in
11 question.

12 (F) Any load allocated pursuant to paragraph (1) shall be
13 located within the boundaries of the affected irrigation district, or
14 within the boundaries specified in an applicable service territory
15 boundary agreement between an electrical corporation and the
16 affected irrigation district; additionally, the provisions of
17 subparagraph (C) of paragraph (1) shall be applicable to any load
18 within the Counties of Stanislaus or San Joaquin, or both, served
19 by any irrigation district that is currently serving or will be serving
20 retail customers.

21 (2) Seventy-five megawatts of load served by the Merced
22 Irrigation District hereafter prescribed in this paragraph:

23 (A) The total allocation provided by this paragraph shall be
24 phased in over five years beginning January 1, 1997, so that
25 one-fifth of the allocation is received in each of the five years. Any
26 allocation which remains unused at the end of any year shall be
27 carried over to the succeeding year and added to the allocation for
28 that year.

29 (B) Any load to which the provision of this paragraph is
30 applicable shall be served by distribution facilities owned by, or
31 leased to, Merced Irrigation District.

32 (C) A load to which the provisions of this paragraph are
33 applicable shall be located within the boundaries of Merced
34 Irrigation District as those boundaries existed on December 20,
35 1995, together with the territory of Castle Air Force Base which
36 was located outside of the district on that date.

37 (D) The total allocation provided by this paragraph shall be
38 phased in over five years beginning January 1, 1997, with the
39 exception of load already being served by the district as of June 1,
40 1996, which shall be deducted from the total allocation and shall

1 not be subject to the costs provided in Sections 367, 368, 375, and
2 376.

3 (3) To loads served by irrigation districts, water districts, water
4 storage districts, municipal utility districts, and other water
5 agencies which, on December 20, 1995, were members of the
6 Southern San Joaquin Valley Power Authority, or the Eastside
7 Power Authority; provided, however, that this paragraph shall be
8 applicable only to that portion of each district or agency's load that
9 is used to power pumps which are owned by that district or agency
10 as of December 20, 1995, or replacements thereof, and is being
11 used to pump water for district purposes. The rates applicable to
12 these districts and agencies shall be adjusted as of January 1, 1997.

13 (4) The provisions of this subdivision shall no longer be
14 operative after March 31, 2002.

15 (5) The provisions of paragraph (1) shall not be applicable to
16 any irrigation district, water district or water agency described in
17 paragraph (2) or (3).

18 (6) Transmission services provided to any irrigation district
19 described in paragraph (1) or (2) shall be provided pursuant to
20 otherwise applicable tariffs.

21 (7) Nothing in this chapter shall be deemed to grant the
22 commission any jurisdiction over irrigation districts not already
23 granted to the commission by existing law.

24 (b) To give the full effect to the legislative intent in enacting
25 Section 701.8, the costs provided in Sections 367, 368, 375, and
26 376 shall not apply to ~~the load served by preference power~~
27 ~~purchased from a federal power marketing agency, or its~~
28 ~~successor, pursuant to Section 701.8 as it existed on January 1,~~
29 ~~1996 electricity purchased or delivered pursuant to subdivision (b)~~
30 ~~of Section 701.8, provided the power electricity is used solely for~~
31 ~~the customer's own systems load and not for sale. The costs of this~~
32 ~~provision shall be borne by all ratepayers in the affected service~~
33 ~~territory, notwithstanding the fire wall established in subdivision~~
34 ~~(e) of Section 367.~~

35 (c) To give effect to an existing relationship, the obligation to
36 pay the uneconomic costs specified in Sections 367, 368, 375, and
37 376 shall not apply to that portion of the load of the University of
38 California campus situated in Yolo County that was being served
39 as of May 31, 1996, by preference power purchased from a federal
40 marketing agency, or its successor, provided the power is used

1 solely for the facility load of that campus and not, directly or
2 indirectly, for sale.

3 SEC. 2. Section 701.8 of the Public Utilities Code is amended
4 to read:

5 701.8. (a) To ensure that the commission regulated electric
6 utilities do not operate their transmission and distribution
7 monopolies in a manner that impedes the ability of the San
8 Francisco Bay Area Rapid Transit District (BART District) to
9 reduce its electricity cost through the purchase and delivery of
10 preference power, electrical corporations shall meet the
11 requirements of this section.

12 (b) Any electric utility regulated by the commission that owns
13 and operates transmission and distribution facilities that deliver
14 electricity at one or more locations to the BART District's system
15 shall, upon request by the BART District, and without
16 discrimination or delay, use the same facilities to deliver
17 preference power purchased from a federal power marketing
18 agency or its successor, *or electricity purchased from a local*
19 *publicly owned electric utility, as defined in Section 9604.*

20 (c) Where the BART District purchases electric power at more
21 than one location, at any voltage, from an electric utility under
22 tariffs regulated by the commission, the utility shall bill the BART
23 District for usage as though all the electricity purchased at
24 transmission level voltages were metered by a single meter at one
25 location and all the electricity purchased at subtransmission
26 voltages were metered by a single meter at one location, provided
27 that any billing for demand charges would be based on the
28 coincident demand of transmission and distribution metering.

29 (d) If, on or after January 1, 1996, the BART District leases or
30 has agreed to lease, as special facilities, utility plants for the
31 purpose of receiving power at transmission level voltages, an
32 electric utility regulated by the commission may not terminate the
33 lease without concurrence from the BART District.

34 (e) When the BART District elects to have *electricity* delivered
35 pursuant to subdivision (b), ~~preference power purchased from a~~
36 ~~federal power marketing agency, or its successor,~~ neither Sections
37 365 and 366, and any commission regulations, orders, or tariffs,
38 that implement direct transactions, are applicable, nor is the BART
39 District an electricity supplier. Neither the commission, nor any
40 electric utility that delivers the federal power *or electricity*

1 *purchased from a local publicly owned electric utility* to the BART
2 District, shall require that an electricity supplier be designated as
3 a condition of the delivery of that power.

4 (f) The BART District may elect to obtain electric power from
5 the following multiple sources at the same time:

6 (1) Electric power delivered pursuant to subdivision (b).

7 (2) Electric power supplied by one or more ~~suppliers other than~~
8 ~~federal power marketing agencies or electrical corporations~~
9 ~~subject to the jurisdiction of the commission.~~ *direct transactions.*

10 (3) Electric power from any electric utility regulated by the
11 commission that owns and operates transmission and distribution
12 facilities that deliver electricity at one or more locations to the
13 BART District's system.

14 ~~(g) Any electricity supplied to the BART District pursuant to~~
15 ~~paragraph (2) of subdivision (f) is not supplied pursuant to a direct~~
16 ~~transaction. Any electrical corporation subject to the jurisdiction~~
17 ~~of the commission that owns and operates transmission and~~
18 ~~distribution facilities that deliver electricity to the BART District~~
19 ~~shall, upon request by the BART District, deliver electricity~~
20 ~~supplied pursuant to paragraph (2) of subdivision (b), without~~
21 ~~discrimination or delay. No entity is a public utility subject to the~~
22 ~~jurisdiction of the commission because it supplies electricity to the~~
23 ~~BART District pursuant to paragraph (2) of subdivision (f).~~

24 SEC. 2.—

25 SEC. 3. The Legislature finds and declares that, because of the
26 unique circumstances applicable only to the San Francisco Bay
27 Area Rapid Transit District, a statute of general applicability
28 cannot be enacted within the meaning of subdivision (b) of Section
29 16 of Article IV of the California Constitution. Therefore, this
30 special statute is necessary.

31 SEC. 3.—

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within
39 the meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 ~~SEC. 4.—~~

2 *SEC. 5.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety
4 within the meaning of Article IV of the Constitution and shall go
5 into immediate effect. The facts constituting the necessity are:

6 In order to ensure the continued delivery of electricity to the San
7 Francisco Bay Area Rapid Transit District at an affordable rate, it
8 is necessary for this act to take effect immediately.

